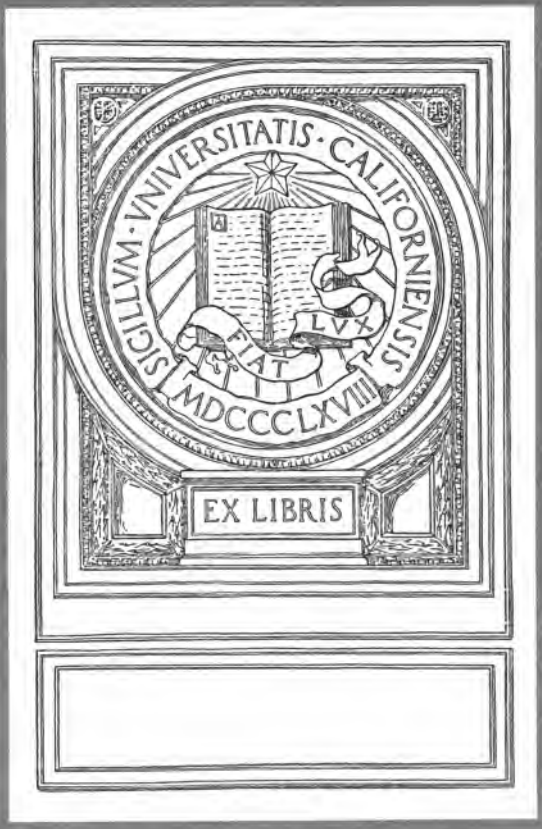
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OBSERVATIONS

ON THE

AMERICAN TREATY,

&c. &c.

OBSERVATIONS

ON THE

AMERICAN TREATY,

In Eleven Letters.

FIRST PUBLISHED IN "THE SUN,"

UNDER THE SIGNATURE OF

DECIUS.

(Thos. P. Courtenay)

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ADVERTISEMENT.

THE following Letters have already appeared in the SUN Newspaper.

It has been suggested to the Author, from several quarters, that a collection of them in the form of a pamphlet, might be useful in the consideration of our differences with AMERICA, which is likely to occupy much of the attention of Parliament.

Having been written at different times, occasionally in much haste, and not with any view to forming a complete treatise, the Author is apprehensive that there may be repetitions of the same remarks, and that the whole is more desultory than he would willingly have published it. But having no opportunity of altering the form of the publication, he has committed

the letters to the press, as they originally appeared, with a very few additional notes.

It is to be observed that the following table of dates, refers to the days of publication; and that the letters were, in some cases, actually written several days previously to their insertion.

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OBSERVATIONS,

&c. &c.

LETTER I.

SIR,

THE publication, in the American Papers, of the Treaty concluded with the United States by Lords HOLLAND and AUCKLAND, gives me an opportunity of appreciating the conduct of the late Ministers, in a point on which they were exceedingly tenacious. With what indignation Lord HOWICK received the slightest insinuation from Mr. PERCEVAL, as to the concessions which he was supposed to have made to AMERICA; how confidently he always appealed to the terms of the Treaty itself; how deeply he regretted the necessity of concealing that important document; with what eagerness he looked forward to the day when, by its production, he might confound his accusers; these circumstances no love of candour, no disposition to impartiality can entirely efface from my recollection.

If, however, the question as to the merits of the Treaty, as it now appears, were merely personal, I should hardly think it necessary to enter upon a detailed examination of its articles. I should feel assured that the late Ministers, with whatever arguments they might be prepared to *defend* their measure, would hardly venture to rely upon it for any addition to the fame which they imagine themselves to have entailed upon their administration; they might attribute to untoward circumstances the failure which others might captiously impute to their own deficiencies, but they would scarcely venture to deny that *a failure there was.*

But the discussion of this Treaty is so intimately connected with the Country's vital interests, the topics which it embraces are of such lasting importance to GREAT BRITAIN, that I feel it impossible to suffer the Paper thus to wear out its own remembrance, nor can I refrain from entering upon an investigation of the particular articles, as well as of the spirit and general tendency of the Treaty. In pursuing this, however anxious I may feel to separate the cause of the Country from that of by-gone Ministers, dispersed probably never to re-unite, I know well that I shall not find it easy to lose sight either of the contempt with which they always alluded to the diplomacy of their predecessors, or of the lofty assertions which they countenanced of their own superior skill. I

venture nevertheless to promise that neither the feelings which these recollections must necessarily excite, nor a wish to retort upon the individuals their own unfairness, shall induce me to take up the question drily and in the abstract; to leave out of the consideration all the circumstances of difficulty with which they may assert they found the subject embarrassed, or to forget that in all such discussions the Public may perhaps be in the dark; that there may exist hidden causes, and perfectly justifying motives, of a line of conduct, upon the face of it, weak, imprudent, or absurd.

Such of these embarrassments as have been stated, so much of these secret justifications as has been hinted at, shall be duly weighed and considered.—Beyond this, I can only take the Treaty as I find it, and if I should chance unwittingly to censure some latent instance of the judgment of the administration, or of the skilful management of the plenipotentiaries, I will expiate my sin of ignorance with ten-fold commendations.

In this spirit, Sir, and with these feelings, I shall in my next proceed to the examination of the AMERICAN TREATY.

DECIUS.

LETTER II.

SIR,

THE *first* article of the Treaty rejected by Mr. JEFFERSON, is merely the formal stipulation of Peace and Amity; the *second*, we are told, confirms the first ten articles of the Treaty of 1794.

These *ten* articles were, by the original Treaty, to be permanent, and to continue notwithstanding the expiration of the remaining articles. The confirmation, therefore, of these, appears, at first sight, to be no more than the *renewal of former Treaties* usual in all conventions of modern times. But when we look to the nature of the stipulations thus renewed, several questions occur which must be answered before it is possible to form a just estimate of this part of the new Treaty. Among these articles are *two* (the fourth and fifth) which, referring to the provisions of the Treaty of 1783, relative to the rivers Mississippi and St. Croix, provide for the appointment of Commissioners for the purpose of ascertaining the *extent* of the former, and determining *what* river was truly intended under the name of the latter.

I own myself ignorant whether these several Commissioners have settled * the matter referred to them. If they *have*, and the two Governments are satisfied with their proceedings, the *result* of their awards, and not the mere reference, ought to have made part of the Treaty. If they have *not*, I cannot attribute much activity or foresight to the Negociators who renewed, in their original form, stipulations which had been ten years in execution. I cannot conjecture what reason they could have had for expecting that the points disputed in 1794, would be nearer to an adjustment in 1816 than in 1806.

But I cannot help suspecting some incorrectness in the American Abstract of the Treaty in this particular, and shall therefore dwell no longer upon the subject, reserving a claim to animadvert, in a more unqualified manner, upon the stipulations of the second article, if I should hereafter find the American statement of it to be entirely correct.(1)

The *third* article of the new Treaty relates to the commerce of America with the British territories in the East. It had been disputed in

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* The Sixth, Seventh, and Eighth Articles, it is said, *have been executed*, which seems to imply that the others have *not* been executed.

(1) See the eleventh Letter.

our courts,* whether, by the thirteenth article of the Treaty of 1794, American vessels were permitted to carry on an *indirect* trade to British India: in other words, whether they were allowed to take in cargoes at a *British*, or other *European* port, for exportation to the East. The construction put upon the thirteenth article, as worded in 1794, was favourable to such a traffic; and this being considered as not within the intention of those who framed that Treaty, or consistent with the spirit of our East India policy, the words "*sailing* DIRECTLY *from Ports of the United States*," have been introduced into this part of the new Treaty.

I have no quarrel either with this alteration, or with the renewal of the remainder of the article; but I beg that it may be remembered, when we come to discuss more generally the tenor of the Treaty, and the balance of advantage, that the qualified sanction thus given to the export and import trade between America and our Indian possessions is a valuable and peculiar *boon* conceded to the United States. Whether the qualification newly introduced be more favourable to us or to America, may well be made a question; with this qualification, or without it, the Treaty allows Americans to par-

* See Reeves's Law of Shipping and Navigation, p. 325, et seq.

ticipate in a commerce from which the mass of British subjects is restricted. That *restriction* may possibly be unwise, but while it forms a part of our policy, the relaxation in favour of America is to be reckoned among the important concessions for which we have a right to expect something in return.

On the *fourth* article, stipulating for a general liberty of trade between the United States and the British dominions in Europe, I have nothing to observe.

The provisions of the *fifth*, for equalizing the duties, drawbacks, and bounties, imposed and allowed in either Country, "*whether the importation or exportation shall be in* BRITISH *or* AMERICAN *vessels*," appear to fulfil, in the most advisable manner, the intentions of the fifteenth article of the old Treaty. Although we derogate in this arrangement from our navigation system, we make no stipulation which is not reciprocal. I am not among those who doubt the general policy of this *mutually* liberal system of commerce; I consider it, nevertheless, as unquestionably true, that wherever the object can be attained without it, a positive stipulation is to be avoided. The necessity of introducing into the Treaty a clause binding us *for ten years* to adopt, under all circumstances, the same commercial policy towards America, I cannot help considering as rather

more doubtful. I am inclined however to believe, that if the Treaty were to be made at all, it was expedient to introduce this provision; but if I am right in apprehending that the introduction of the clause as it now stands was a much more favourite object with the American than the British plenipotentiaries, I must contend that, although reciprocal, the stipulation ought to be considered, though not as an important concession, as an instance of the favourable disposition of Great Britain, which ought to ensure to her equal indulgence in points which were equally *favourite* with her.

Whether we have received at the hands of America the returns which we had a right to expect—whether our conciliating conduct towards her has produced a corresponding demeanour, and equally amicable measures, towards us—will soon be ascertained. The next point to which I have to refer, is one of those upon which, it was supposed, the negociation chiefly turned; a matter, for the adjustment of which, the sturdy talent of Lord GRENVILLE had not been sufficient, and which we were taught to believe had at last been completely settled by the diplomatic experience of Lord AUCKLAND, and the acuteness, so well tempered with urbanity, of his more unpractised colleague. I look therefore with anxiety to the *sixth* article, for the regulation of the AMERI-

CAN INTERCOURSE with our *West India* Islands, and I find the only conclusion to which the negociators have brought themselves, "*that they cannot agree about the matter!*" There are so many points of view in which this article requires discussion and illustration, that I shall make it the subject of another Letter.

DECIUS.

LETTER III.

SIR,

THE *sixth* Article of the new Treaty states (according to the American Abstract), "THAT THE PARTIES CANNOT AGREE ABOUT THE AMERICAN TRADE TO THE BRITISH WEST INDIES," but that "while they *attempt* an amicable agreement, both may exercise their existing rights." If I had not observed the great degree of inattention with which the public has received the foregoing intimation, I should scarcely think it necessary to add any thing by way of illustration to the plain language of the article itself; but I find that the

adherents, as well as the opponents, of the late administration, applying all their talents to a *subsequent* article of the Treaty (which we shall soon consider), have passed over, as a matter of no moment, the *perspicuous* and *comprehensive* stipulation now before us. I therefore deem it necessary to place in a more prominent point of view the *sixth* article of this abortive convention.

The session of 1806 must have familiarised to all your readers the subject of the *American intercourse* with our West India islands. From 1783 to 1794, nothing was definitively settled in regard to this important traffic: it was regulated from time to time by annual Acts of Parliament, or Orders in Council. Without enumerating the variations in these several Acts or Orders, it is sufficient to observe, that at the period of the Treaty of 1794, the trade between the United States and our Plantations was limited to *British ships*. By the *twelfth* article of *that* Treaty, *American* vessels (of not more than 70 tons) were put upon the same footing as *British*, as to the import and export trade of the *British West Indies*. To this concession two provisions were added, first, "that the said American vessels do carry and land their cargoes *in the* UNITED STATES *only:*" And that, during the continuance of the Treaty, BRITISH *vessels* should be put upon *the same footing with respect to the trade between the* UNITED STATES

and THE SAID ISLANDS *as the vessels of* AMERICA *herself.* The American Senate refusing to consent to these terms and conditions, an additional article was added to the Treaty, whereby it was agreed to suspend so much of the *twelfth* as related to the trade in question; and thus the matter continued from that time to the commencement of the late negotiation.

When it was understood that two persons of high rank and great talents had been appointed to confer with the very intelligent ministers of the United States on the several points upon which the two governments were at issue, it was naturally supposed that the *intercourse* would be considered as among the most important objects of their conferences. The subject, too, was brought before Parliament in a particular manner, by the introduction of what was called the AMERICAN INTERCOURSE BILL. This measure was calculated to favour, by taking them from the annual cognizance of Parliament, (2) the frequent suspensions of the Navigation Laws, which the necessity was *stat-*

(2) His Majesty is empowered by this Act (46. Geo. 3. cap. III.) to authorise the Governors of the West India colonies to permit the importation and exportation of articles (with some exceptions) in Neutral ships. Previously to this law, there was a Special Act of Indemnity of each breach of the Navigation System. I do not mention this act with a view to discussing its merits, but merely as proving the *fact* of the late ministers being favourably inclined towards the intercourse.

ed to require in regard to this branch of our trade.

It was therefore not unreasonable to apprehend, that the ministers who prepared this bill were rather inclined to look favourably upon that unrestrained and unconditional intercourse which was supposed to be the favourite object of America. It was suspected that they had introduced into their new Treaty, stipulations respecting this traffic, more inconsistent with our navigation system than was either called for by necessity, or compensated by advantages obtained. This suspicion the late ministers constantly and stoutly repelled; there was no point upon which they more uniformly or confidently *appealed to the* TREATY, deprecating premature discussion; and now that we have the Treaty before us, we must acknowledge, that nothing could be more unfair than the insinuations of Mr. PERCEVAL, nothing more unfounded than the suspicions of Lord CASTLEREAGH. The late ministers are unquestionably acquitted, on their appeal, from the charge of having made an injurious Treaty upon the subject of *intercourse, for they made* NO *Treaty at all!*

It is certainly at first sight rather difficult to discover here the foundation of that arrogated superiority of the late administration, in respect to talents, to prudence, or even *conciliation.* But, is it pretended, that any of those

embarrassments which *former measures* had entailed upon the negotiators, can possibly have influenced them in this stipulation? Can it be stated that they did not find the question perfectly open? To *what* had former ministers pledged the country? From 1794, when Lord *Grenville* framed with Mr. JAY the article which was rejected by America, not one circumstance of embarrassment had intervened. If any thing had taken place, which could be construed into a difficulty, it was certainly that same Act to which I have alluded, which might possibly be considered in America, as it was by many persons here, as manifesting a disposition to *relax*. But waving this, never seemed question in diplomatic discussion more freely and completely before the ministers of two powers.

Yet *nothing* is resolved! Sir, there *may* be a very good reason for this:—Lord AUCKLAND's ingenuity may suggest, and Lord HOLLAND's eloquence may enforce, a perfect and satisfactory justification. But in the mean time it is not too much to say, that the *presumption* is against them. If their acknowledged *talents* were quoted as a presumption that they would not *unnecessarily* have left an important article unsettled, I should set off against *that* consideration the natural desire of all Plenipotentiaries *to sign* (certainly not least strong in a *coup d'essai*), not to mention the *bias* in favour of

AMERICA, under which Lord HOLLAND may be presumed to have treated.

A further discussion of this subject would lead me too far into the *general* merits of the Treaty; I shall, therefore, here quit the Sixth Article, and conclude my Letter. My next will refer to most important matters, on which the Plenipotentiaries had not equal difficulty in making up their minds. As in the discussion of these, I may perhaps find something deserving of rather pointed censure, I would recommend the reader to employ the interval in impressing strongly upon his recollection such instances of the superior policy, judgment, and decision of the late administration, as in the preceding discussion may have most forcibly struck him.

DECIUS.

P. S. Since I wrote the above, I find that the supporters of the late administration will have something more to say for them tomorrow. I shall delay my Fourth Letter for this supplementary defence.

LETTER IV.

SIR,

I HAVE delayed this Letter in hopes of finding in the promised Articles of the leading Opposition Paper, on the subject of AMERICA, something by way of illustration, if not of defence, of the Treaty concluded by its Patrons, but I still meet with nothing specific, except as to the *Eleventh* Article, and as to the *Seamen*, on which subject the Treaty is silent; I shall, therefore, proceed in the detailed consideration of the Articles.

The *Seventh* is copied from the *Sixteenth* Article of the Treaty of 1794, and relates to the appointment and behaviour of Consuls.—It is a good Article.

The *Eighth*, following the *Seventeenth* of the former Treaty, provides for the speedy decision of cases respecting Vessels detained on suspicion of Enemies' property or contraband. "There is added," says the American Abstract, "a *promise, on the part of* GREAT BRITAIN, "that hereafter INDEMNIFICATION shall be "granted for *unjust seizures*, for *detention* and

" *vexation.*" What is meant by this?—It was agreed in the former Treaty, " that all proper " measures should be taken to prevent *delay* in " deciding the cases of ships or cargoes so " brought in for adjudication, and in the pay- " ment or recovery of *any Indemnification ad-* " *judged* or agreed to be paid to the Master or " Owners of such Ships." All this is very right;—in cases of vexatious seizure, the COURT of ADMIRALTY ought to decree the payment of the Expences of the Claimant, by the Captor, and to assess the freight, demurrage, &c. according to the degree in which the detention may be deemed *frivolous* or *vexatious.* Any stipulation for Indemnification, beyond this, which is the usual practice, seems *unnecessary*; and *mischievous* also, as every provision is, which brings to be decided, as *questions of State*, matters which, *concerning Individuals*, may be safely left to the ordinary administration of Justice in the COURTS of PRIZE. But it seems as if this additional stipulation were applicable *only* to seizures made by GREAT BRITAIN. *Great Britain*, it is true, is now *Belligerent*, and *America* professes to be *Neutral*; but a Treaty, surely, which is to continue for ten years, ought not to confine itself to the actual state of things, without looking to contingent changes. I might urge this as a point of policy; but even supposing the contingency to be more improbable than it is, is there not to be perceived in the Clause,

so limited, a little too much of the tendency to insert whatever stipulation AMERICA chose to ask for, without attending to the corresponding interests of Britain?

But let us consider the American Abstract to be unfaithful, as to the *limitation* to Great Britain;—I still denounce the additional Clause, if the account be in other points correct, as either useless or dangerous; *useless*, if referred merely to the judgments of the Court of Admiralty; *dangerous*, if intended to bring every claimant upon the State.

At least, Sir, let us hear something by way of explanation. The Clause as it now stands is either not to be understood or not to be defended.

I have no objection to the *Ninth* Article, which adopting generally the list of contraband contained in the eighteenth of the former Convention, excepts Pitch and Tar, when not going to a Port of *Naval Equipment*. This distinction is acknowledged by our Courts with respect to several articles of *doubtful use*, and there seems no occasion which could make it necessary to destroy it, which would not equally make it necessary to impose much more rigorous restrictions. This new stipulation, however, is also to be added to the list of those evidently inserted at the request of America. I am far

from stating this as an objection; but it is indispensable that it should be borne in mind.

The *tenth* Article, which adds to the latter part of the former *eighteenth* (respecting Blockade), the provision that "passengers not in the Military Service of an Enemy shall not be taken and made Prisoners," does not call for particular observation.

The order of arrangement now brings me to the ELEVENTH Article, which professes to adjust one of the most difficult points of the Negotiation, *the interference of* AMERICA *in our Enemy's* COLONIAL TRADE. Before we begin upon this discussion it is natural to pause. The evil against which our Ministers had to provide was on all hands acknowledged to be great, and the remedy not unattended with difficulty. From their conduct as to this point, to which the publication of "War in Disguise" has given universal interest, we shall be better enabled, than from any other part of the Treaty, to appreciate correctly the talents of the late Administration,—their knowledge, and their skill, in that important part of diplomacy which concerns our maritime relations. Another circumstance gives this Clause a peculiar claim to attention. It is on this, and on this *only*, that the admirers of the Treaty have ventured positively to assert that the Plenipotentiaries were *embarrassed* by *former measures*. In my

next Letter, therefore, I shall state the question as it stood; I shall examine the allegations of embarrassment, and mark out clearly the provisions of the Article as I find it.

We have already met with a plentiful share of *conciliation*, the approaching discussion will ascertain whether it has walked hand in hand with FIRMNESS.

DECIUS.

LETTER V.

SIR,

ACCORDING to the intimation of my Fourth Letter, I proceed to the discussion of the *eleventh* Article of the American Treaty;—and first I shall state the question.

Ever since the war of 1756, when the case first happened, Great Britain has asserted, as a principle of her maritime law, that Neutrals were not to be suffered to carry on any branch of trade *not open to them in time of peace.*

The trade between France and her Colonies in the West Indies being monopolized by the Mother Country, we have held any trade between France and her Colonies to be forbidden to Neutrals during *war*, as it was by France herself in time of *peace*. This was our principle, of which America disputed the justice and the reason.

Soon after the commencement of the late War, when France *opened* her Colonial Ports to *Neutral* Traders, England found it necessary to enforce strictly her prohibition of the Trade; America, who naturally became the principal carrier of France on the Atlantic, soon devised methods of eluding the instructions which we gave to our cruizers. It is not necessary to follow minutely the variations of these instructions; we prohibited, generally, according to our principle, ALL *Neutral* Trade with the *French Colonies*. From time to time we allowed several relaxations of this principle. From 1794, to the conclusion of the late War, and during the present war, we have permitted the exportation of French Colonial Produce, *directly* from a FRENCH *Island* to an AMERICAN Port. The voyage to *France*, or to any *European* Port, we have strictly forbidden to Americans. Nothing can be more obvious than the ground upon which this distinction rested; we did not wish to prevent America from supplying herself with such products of the Colonies of France as she

might *really want* for her own use; we only insisted upon the right of preventing her from carrying on, *for* FRANCE, that Trade in which our maritime superiority had made it impossible for FRANCE herself to persevere.

The American Government did not succeed in obtaining a further relaxation of the instructions, but the ingenuity of the Merchants very soon devised a method of evading them. *They carried their goods from the* WEST INDIES *to a Port of the* UNITED STATES, *from which, without molestation, they re-exported them to* EUROPE.

The Courts of the Law of Nations, such as are our Admiralty Courts, always proceed, in a much greater degree than our Courts of Law, or even than our Courts of Equity, upon the BONA FIDES. Any species of *fraud* or *evasion* is in these Courts (and surely with reason) considered as noxious; they look always to the Spirit of the law which they administer; and they will no more countenance an evasion than a direct *contravention* of the law.

Whenever, therefore, it appeared to these Courts, that the importation into an American port was not *bonâ fide* an *importation into* America, and for her use, they deemed the voyage *continuous* from the West Indies to Europe, and the touching in America as a mere deviation,

but no interruption of the voyage; and they consequently condemned the vessels thus eluding the law.

What was, or what was not, a *bonâ fide* importation, it was not very easy to discover—the Court of Admiralty in vain attempted, or rather saw the futility of attempting, to lay down a general and incontrovertible rule, which should be applied to all cases. But although it never fixed upon a *criterion*, it was led by the circumstances which various cases brought before it, to incline, at different times, to different circumstances, as affording a *presumption*, at least, that the importation was real.

At first, before the system of evasion had been brought before the Court, the Americans thought it sufficient merely to *touch* at an American Port—this was discovered, and the fraud prevented; they next *transhipped* their goods in an American harbour—this too was detected; they found it necessary actually to *land* the goods;—to give *bond* for the duties, and—actually to *pay* the duties, and all, as has been abundantly proved in our Courts, evasively and fraudulently, the merchants being supported in their evasion and fraud by the officers of the American Revenue.

The Court, therefore, finding it quite impossible to adopt any specific rule as to what

should be the *test* of genuine importation, the Judge was obliged to decide upon the merits of each case according to the evidence; and in this practice he was supported by the decisions of the Court of Appeal.

It was in this state of the matter that the subject came under discussion by the British and American Plenipotentiaries. The Politicians have attempted what the Civilians could not accomplish,— the establishment of a GENERAL RULE.

Before I inquire how well they succeeded, it is necessary to allude to the circumstances of embarrassment, arising out of former measures, which it has been urged the British Ministers met in the execution of their trust.

I have already stated, that the Court of Admiralty had been led, at different times, to consider particular circumstances as *presumptive* proof of *bonâ fide* importation. The *Vice*-Admiralty Courts, established in the West Indies and elsewhere, are in the habit of looking to the *High* Court of Admiralty in London for their guidance in all matters of law or of evidence. Whenever this Court endeavours to lay down any general rule of law, or to fix any precise method of its application, the inferior Courts are expected to adopt the same; and they are sometimes made acquainted by Government

with the decision of the Superior Court, in order to produce uniformity of proceeding;—in the same manner, the decisions of the *Supreme* Court of *Appeal* are *law* to the High Court of Admiralty as well as to the Vice-Admiralty Courts.

It so happened, that while the High Court of Admiralty, not having yet discovered the extent of the artifices by which an evasive importation was concealed, was in the practice of considering the *payment of duties* as a sufficient proof of *bona fides*, the Vice-Admiralty Court of Nassau (whether from a general misapprehension, or from having *better means of discovering* the American frauds, I cannot say) condemned a vessel, which, after having imported into America a cargo of enemy's colonial produce, had attempted to re-export it to a port in Europe. Of this sentence the American Minister, Mr. RUFUS KING, complained to our Government; the matter was officially submitted to the King's Advocate General, who, referring to the decision of the High Court of Admiralty, reported, that the decree of the Court of Nassau was erroneous. This report was communicated to the Vice-Admiralty Courts for their guidance, and to the American Minister for his information.

And it is upon this report and communication that the allegation of *embarrassment* is found-

ed. It is said that Ministers were prevented by it from making any stipulation contrary to the particular decrees of the Court of Admiralty to which it referred. Nothing can be more completely erroneous. In the first place, I set out by denying stoutly, that any Law or Principle which had been adopted by a Court of Admiralty, even though it should have existed from the time of Sir LEOLINE JENKINS, ought to have precluded the discussion of the subject to which it referred, by the Ministers of the Negotiating Powers. It might as well be said that an Act of Parliament imposing certain duties, or allowing certain drawbacks, would be sufficient to preclude any negotiation on the subject of reciprocal imports, as contained in the fifth Article.

But if it has not already appeared that the report of SIR JOHN NICHOLL *referred only to the then usual practice of his Court*, I trust that the Extracts, which I must request you to insert, from the Judicial Sentences of the Prize Courts, both prior and subsequent thereto, will completely bear me out.—It is fair, first to insert that part of the Report itself which appears to have been relied upon on the other side.

" The direct trade between the Mother Country and her Colonies has not, I apprehend, been recognized as legal, either by his Majesty's Government, or by his Tribunals.—*What is*

a direct trade, or what amounts to an intermediate importation into the Neutral Country, may sometimes be a question of some difficulty. A GENERAL DEFINITION *of either, applicable to all cases, cannot well be laid down.—The question must depend upon the particular circumstances of each case.* Perhaps the mere touching in the Neutral Country to take fresh clearances may properly be considered as *a fraudulent evasion*, and is, in effect, the direct Trade; but the HIGH COURT of ADMIRALTY has expressly decided (and *I see no reason to expect that the* COURT *of* APPEAL *will vary the rules)*, that *landing the Goods and paying the Duties in the Neutral Country, breaks the continuity of the voyage, and is such an importation as legalizes the trade,* although the goods be reshipped in the same Vessel, and on account of the same neutral proprietors, and be forwarded for sale to the mother country or colony." (3)

In this Report (which was dated the 16th of March 1801), the great difficulty of laying down a *general rule* is recognised, as well as the necessity of referring each case to its *particular circumstances*; a *fraudulent evasion* is acknowledged to be as noxious as the *direct trade*, and when the decision of the Admiralty Court, relative to the Payment of the Duties is mention-

(3) Cobbett's Political Register, Vol. VIII. p. 729, 754.

ed, it is clearly implied (as was the undoubted fact) that the COURT *of* APPEAL *might vary the rule,* though the King's Advocate did not at that time see any reason to *expect* that they would.

Having already drawn out this Letter to an unusual length, I shall renew the subject in my next when I shall enquire how justly the mere transmission of a copy of Sir JOHN NICHOLL's Report, to Mr. RUFUS KING, can be construed into *a promise,* on the part of LORD HAWKESBURY, " that *the payment of duties should be received as evidence of the continuity being broken.*" In the mean time, I am very willing to let the question rest upon the report itself, with the preliminary explanations which have already been given.

DECIUS.

LETTER VI.

SIR,

I PROMISED in my last Letter, to point out in the Judgements of Prize Courts, the clearest illustration and confirmation of the arguments which I have used.

Sir WILLIAM GRANT, in pronouncing the sentence of the Court of Appeal on the case of the *William Trefry*, on the 11th of March, took a review of the cases of Colonial Trade which had been previously decided; some of his observations are so strikingly apposite to our present discussion, that I must beg leave to trouble you with copious extracts.

It must be recollected that the point which I am now to establish is, that allowing (for the sake of argument) that the adoption of a *Test* of importation by the Courts of Prize, would have precluded discussion on the subject by the Negotiators, *no* such *Test* ever *was* adopted; every attempt to establish a *faithful criterion* having been frustrated by the ingenuity of the Traders.

To effect this purpose simply, it would not

be necessary to cite so largely as I shall do the words of the Master of the Rolls; but I find in the judgment above-mentioned, something that is relative to every part of the discussion before us, something that elucidates every observation that I have made, and much that, after we have cleared away the alledged embarrassment, will enable us to appreciate the *intrinsic merits* of the *Eleventh* Article. I am not so partial to my own writing as to expect to make a matter clear which Sir WILLIAM GRANT has left obscure. I shall therefore extract nearly the whole of the judgment, and, if afterwards the case remains in doubt, I shall make no attempt to remove it.

Sir WILLIAM GRANT, having stated the illegality of the direct trade, proceeds as follows:

"*What* then, with reference to this subject, is to be considered as a *direct* voyage from one place to another? Nobody has ever supposed that a mere deviation from the straightest and shortest course in which the voyage could be performed, would change its denomination, and make it cease to be a direct one within the intendment of the instructions. (4) Nothing

(4) The instructions in force at the period alluded to, were as follows.

24th June 1803. "In consideration of the present state of commerce, we are pleased hereby to direct the commanders of

can depend on the degree of the direction of the deviation ; whether it be of more or fewer leagues, whether towards the coast of Africa or towards that of America. Neither will it be contended that the point from which the commencement of a voyage is to be reckoned, changes as often as the Ship stops in the course of it; nor will it the more change, because a party may choose arbitrarily, by the Ships' Papers, or otherwise, to give the name of a distinct voyage to each stage of a Ship's progress. *The act of shifting the Cargo from the Ship to the shore, and from the shore back again into the Ship, does not necessarily amount to the termination of one Voyage* and the commencement of another."—****

" Let it be supposed that the party has a *motive* for desiring to make the voyage appear to begin at some other place than that of the original lading, and that he therefore *lands the cargo*, purely and solely for the purpose of *enabling* himself to *affirm*, that it was at such other place that the goods were taken on board, would this contrivance at all alter the truth of the fact? Would not the real voyage still be from the place of the

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our ships of war and privateers, not to seize any neutral vessel which shall be carrying on trade directly between the colonies of the enemy and the neutral country to which the vessel belongs, and laden with the property of inhabitants of such neutral country: provided that such neutral vessel shall not be supplying, nor shall have on the outward voyage supplied, the enemy with any articles contraband of War, and shall not be trading with any blockaded port."

original shipment, notwithstanding the attempt to give it the *appearance* of having begun from a different place? The *truth* may not always be discernable, but when it is discovered, it is *according to the* TRUTH, and not according to the FICTION, that we are to give to the transaction its character and denomination. If the voyage from the place of lading be not really ended, *it matters not by what acts the party may have evinced his desire of making it appear to have been ended.* That those acts have been attended with trouble and expence may weigh as *circumstances of evidence,* to shew the purpose for which the acts were done; but *if the evasive purpose be* admitted or *proved, we can never be bound to accept as a substitute for the observance of the Law, the means, however operose, which have been employed to cover a breach of it.* Between the *actual* importation, by which a voyage is really ended, and the *colourable* importation, which is to give it the appearance of being ended, there must necessarily be a great resemblance. The acts to be done must be almost entirely the same; but there is this difference between them: The landing of the cargo, the entry at the Custom-house, and the *payment of* such *duties* as the law of the place requires, are necessary ingredients in a genuine importation; the true purpose of the owner cannot be effected without them. But in a fictitious importation they are mere voluntary ceremonies, which have no natural connexion

whatever with the purpose of sending on the cargo to another market, and which, therefore, would never be resorted to by a person entertaining that purpose, except with a view of giving to the voyage which he has resolved to continue, the appearance of being broken by an importation whichhe has resolved not really to make." ********** He continues with more particular reference to the case before the Court, and adds, " It can never be contended, that an intention to import, once entertained, is equivalent to importation; and it would be a contradiction in terms to say, that, by acts done after the original intention has been abandoned, such original intention has been carried into execution. Why should a cargo which there was to be no attempt to sell in America have been entered at an American Custom-house, and voluntarily subjected to the payment of any, even the most trifling, duty? not because importation was, or in such a case could be, intended, but *because it was thought expedient that something should be done which in a British Prize Court might* PASS *for importation.* Indeed *the Claimants* SEEM TO HAVE CONCEIVED *that the inquiry to be made here was, not whether the importation* WAS *real or pretended, but whether the* PRETENCE *had assumed a particular* FORM, *and was accompanied with certain circumstances which by some* POSITIVE RULE *were, in all cases, to* STAND FOR *importation, or to be conclusive evidence of it*; and it has, I understand, been

said, that our departure from that SUPPOSED rule, in the case of the *Esser, Orne,* was a surprise upon the Merchants of America, who had by our former decisions been led to believe that proof of landing, and *payment of duties,* in America, would in every case be absolutely "decisive of the legality of the voyage."***** After having looked very attentively into all the cases in which, as far as I am aware, this sort of question has occurred, I conceive *not only that it will be impossible to point out a judgment in which any such* UNQUALIFIED DOCTRINE *has been laid down,* but that *the judgment, antecedent to that in the Essex has clearly and unequivocally* NEGATIVED *the existence of the alledged* RULE *of* DECISION.

The first case of the kind, that of the *Polly, Lasky,* occurred in the High Court of ADMIRALTY, * in February, 1800; *the Learned Judge of that Court expressly disclaimed the at-*

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* The words of Sir WILLIAM SCOTT were as follows. "It is not my business to shew what is universally the test of a *bona fide* importation: It is argued that it would not be sufficient that the duties should be paid and that the cargo should be landed. If these criterias are not to be resorted to, I should be at a loss to know what should be the test; and I am strongly *disposed to hold* that it would be sufficient that the goods should be landed and the duties paid. If it appears to have been landed and warehoused for a considerable time, it does, I think, raise a forcible presumption on that side, and it throws it on the other party, to shew how this could be merely *insidious and colourable.*" Robinson's Admiralty Reports, Vol. 2. p. 261.

tempt to define what should be deemed universally the TEST *of a* BONA FIDE *importation.* He did indeed *lay great and just stress* upon the *payment of the American Import Duties,* which was there sworn to have been actually made, but *still it was as* EVIDENCE *of the* BONA FIDE *importation.* "*The very statement that the thing in question was the bona fides of the importation, did, of necessity, exclude the supposition, that* ONE UNIVERSAL EFFECT *was, in all cases, to be ascribed to a given set of circumstances, without regard to the manner in which their effect as evidence might be varied by other circumstances,* with which, in different cases, they might be found contrasted or combined." * * * * * *

It is to be observed, that this case of the *Polly* was previous to the year 1801, and appears to have been that on which the *King's Advocate* founded his Report. Sir WILLIAM GRANT proceeded to cite the cases determined on appeal *since* that period. The *Mercury, Roberts,* "by all the documents found on board, appeared to have been laden at *Charleston,* and, among these documents, there was an attestation *sworn* at the *Custom-House,* that all the parts of the cargo, which were of foreign growth or manufacture, had been legally imported, *and the duties thereon paid or secured*: it came out, however, in the depositions of the witnesses examined on the standing interrogatories, that the cargo *had been*

laden at the HAVANNAH, and *it never had been landed at* CHARLESTON, *the place of the alledged shipment.* It being evident that the touching at CHARLESTON was for the mere purpose of giving to the voyage the colour and appearance of having begun there, we affirmed the sentence of condemnation, without previously endeavouring to ascertain whether any *duties had* really *been paid* in America. The true nature of the transaction ascertained, it seemed immaterial to inquire whether the *payment of duties* had been *one* of the means employed to *disguise* it." * * * * * * " The cargo" of the Schooner *Freeport* " had been landed, and remained some time on shore; but the Master admitted in his claim that the cargo was intended for the *Spanish West-India* market, and did not even assert any purpose of importation into America. We therefore affirmed the sentence of condemnation.—The cargo having been landed, it might be taken for granted, that whatever duties were payable had been paid, but as the case stood, *we thought the fact immaterial,* and therefore directed no inquiry with regard to it." * * * Sir WILLIAM cited other cases, and again mentioning " *The* SUPPOSED *principle of holding, that landing and* PAYMENT *of* DUTIES *in* AMERICA *did absolutely, and under all circumstances, legalize the subsequent voyage,*" he adds, " I have shewn that *there was not* ONE *decision in which* ANY SUCH PRINCIPLE HAD BEEN ASSERTED *or* IMPLIED,

and that there were at least two decisions which stood in DIRECT CONTRADICTION TO IT." *

It is impossible to read the foregoing extracts, without asking;—if the letter of Lord HAWKESBURY to Mr. KING, in 1801, was either calculated or intended to bind the Courts of Prize as to their rules of evidence, how comes it that even the existence of such a letter was never alluded to by the Court? How comes Sir WILLIAM SCOTT to overlook it in all his judgments? How happened it that when Sir WILLIAM GRANT, when expressly refuting the charge of change of principle, thought it unnecessary to take the slightest notice of the alledged *promise?*—Because Sir WILLIAM GRANT considered the letter, as every body must who thinks for ten minutes on the subject, as a mere piece of information as to the circumstances of *evidence* which had theretofore weighed most strongly on Sir WILLIAM SCOTT, ignorant then of the degree in which deceitful testimony mightbe found. Had Mr. KING applied but a little *earlier*, when our Courts were still less informed of the extent of American fraud, it would probably have been the lot of Lord GRENVILLE, as Secretary of State, to communicate a report, in which the *landing* of the goods (without any notice of duties) would have been the supposed

* Robinson's Admiralty Reports, Vol V. p. 385.

test. Had he applied a few years later, Lord HARROWBY, Lord MULGRAVE, Mr. FOX, or Lord HOWICK, would have told him, that it would not be sufficient to prove the *payment of the duties*, if there were other evidence calling into question the *sincerity* of the importation.

But, Sir, if the judgment pronounced by Sir WILLIAM GRANT, in March, 1806, involved a revocation or a contravention of a solemn promise made by Government, under whose authority did he speak? Who composed, *in March*, 1806, the Court of Appeal in Prize Causes, of which the Master of the Rolls was only the mouth-piece? Whose care was it *in March*, 1806, to preserve the honour of the Country in its foreign relations? Let the advocates of the late Ministers answer these questions to themselves, before they repeat their censure upon Lord HAWKESBURY.

Conceiving, Sir, that the charge against Lord HAWKESBURY, of having *made* "a hasty and gratuitous promise to America," is founded in total misconception, it is hardly necessary to repeal the charge of "*breaking* it in a flagrant and vexatious manner." By what act of Lord HAWKESBURY, or his Colleagues, was the supposed promise violated? No farther certainly, than by permitting the Court of Admiralty to act, as it always had acted, upon *detected fraud!* I say *permitting*, for the practice did not spring

from Government, but from the Chair of Justice in Doctors' Commons. Ministers neither originated the practice (*strangely* conceived wrong !), nor put a stop to it. How was it under the *late* Administration ? Did Sir WILLIAM SCOTT, in complaisance, relax in his equitable administration of justice ? The very idea is a libel. Did those Ministers instruct him afresh, or reverse his decrees ? Certainly not. It surely follows then, that as far as there is any demerit in the breach of a promise never made, it is shared with the Court of Admiralty, equally by Lord GRENVILLE and the Duke of PORTLAND, Lord HENRY PETTY, and Mr. PERCEVAL.

Sir, no promise was either made or broken; Lord HOLLAND and Lord AUCKLAND had the matter freely before them ;—how wisely they stipulated for the honour and advantage of their Country, shall be discussed in the next from

DECIUS.

LETTER VII.

SIR,

THE following is the Eleventh Article, as stated in the American Papers:

"Citizens of the United States may carry European goods to the *Colonies* of *Enemies* of GREAT BRITAIN (from the Ports of the UNITED STATES), provided that both vessel and cargo be, *bonâ fide*, American property; that the goods shall have been unladen within the United States, and that in addition to that part of the duty already reserved from the drawback on exportation, the further sum of one per cent. *ad valorem* of such goods shall be paid. *They may also export from the United States to Europe, the produce of Colonies of the Enemies of Great Britain, provided they, being neutral property, shall have been* UNLADEN as before, and *that* TWO *per cent.* ad valorem *be paid on exportation,* in addition to what is reserved on the drawback. After the expiration of the Treaty, all antecedent rights on these subjects are to revive."

It is with the *latter* part of this stipulation that the preceding discussion is more imme-

diately connected; with that, therefore, I shall begin.

When I addressed you last, I hinted at the *date* of Sir WILLIAM GRANT'S judgment, in the case of the *William*, as evidence of the concurrence of the late Administration in the doctrine it contains. I have since met with the names of the Lords of Appeal, *actually present and consenting*, at the delivery of that judgment. These were, "Earl FITZWILLIAM, Duke of MONTROSE, Lord AUCKLAND, MASTER of the ROLLS, Sir WILLIAM WYNNE, Sir WM. SCOTT."

Lord GRENVILLE indeed was not present; but it will hardly be contended that HE would have dissented from the opinions of the Court, or that HE holds in low estimation the right or the power of interdicting the Colonial Trade: HE who, during the former War, maintained the interdiction with all his strength in the Cabinet, and employed the whole force of his eloquence * in censuring his successor, whom he conceived to have abandoned it, even to *Russia*.

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* "To the next point of which I have to speak, the charge of ambiguity does not apply. On this head the Treaty is unfortunately but too explicit. Is is clear that we have admitted Neutrals to carry on the whole Colonial Trade of France. That claim is indisputably and unequivocally conceded by Great Britain.

I know well that it has been contended by persons warmly attached to the late Administration, that the restriction itself was impolitic and unjust; I know that some of those persons had peculiar means of access to Lord HOLLAND; I know not with what success these certainly very able advocates enforced their suit—but I can neither believe that if his Lordship imbibed their sentiments, he converted his Colleagues in the Cabinet and in the Commission—or that he was more mindful of his own opinion than of the instructions he received. I must consider it therefore to have been the concurrent intention of Lord HOLLAND and Lord AUCKLAND by no means to *relax* the interdiction, but to establish a TEST or CRITERION by which it should be applied;—by which *bonâ fide* importations into America, *for her own use*, as described by Sir WILLIAM GRANT, *without any ulterior destination to Europe*, could be surely distinguished.

"I have already stated to your Lordships on what grounds of policy and justice we have always hitherto refused to Neutrals, during War, the privilege of trading with the French Colonies. If this prohibition were once withdrawn, or if it did not attach upon the Commerce of those Colonies with the Neutral Ports of Europe, as well as on their direct Trade with France, our Maritime superiority would, at least in that quarter of the world, be completely eluded: the valour and energy of our Navy would be deprived of the just reward which it now derives from its most profitable Captures, and the Enemy will enjoy undiminished in War, as in Peace, all those resources which are most applicable to increased exertions against the vital interests of Great Britain."—[Lord Grenville's Speech on the Convention with Russia, in 1801.]

I must believe also that Lord AUCKLAND at least came to the discussion with a mind full fraught with the sentiments expressed by the Master of the Rolls, as to the *non-existence of any previous promise*, and as to the fallacy of any reliance upon "attestations sworn at the Custom-houses" of America, and as to the Neutral practice of employing very "operose means to cover the breach of the law."

I am warranted, in short, in believing, nay, I am bound to believe, that the Treaty was conducted upon the same view of the subject which dictated the judgement of the Court of Appeal; to which I must again and again refer, as the clearest exposition, and the most forcible illustration, of the principles upon which England has acted, of the difficulties she has met with in their application to America, and, most of all, of the danger of guiding that application by a GENERAL RULE.

Our Negotiators, nevertheless, have established such a Rule; and what is it? Why, that very criterion, the *payment of Duties*, which had been proved, and solemnly pronounced, to be deceitful: a Rule which, if we may credit Sir WM. GRANT and Lord AUCKLAND, had been fraudulently evaded by the Merchants, with the connivance and assistance of the Officers of Government!

If the article itself is insufficient for the purposes of Great Britain—if it does not give her that security against the evil complained of which she anxiously desired—are these disadvantages *compensated* by the additional *simplicity* of the new stipulation?—By the *facility* which it will afford to the Courts of Admiralty in deciding, and to Neutrals in prosecuting, their claims?

No man is more sensible than myself of the importance of these objects; there is no apology to which I would so willingly listen for any relaxation of our Maritime Code. But the simplicity must be real; the *facility* must not be more largely given to fraud than to innocence.

If we could concur in a provision which, while it retained even a part of our Belligerent claims, should secure that part from encroachment;—if by a little modification, we could prevent the irritation to which the exercise of our claims gives rise,—still more, if we could devise a method of protecting the fair trader, while the perjured *neutralizer* should be punished;—if, in short, we obtained even *good-will* in return for our concession, I should not object to the indulgence that has been granted.

But would such be the effect of the proposed Treaty?

The Article allowing the payment of duties to be a criterion of *bonâ fide* importation, provides no criterion for the *bona fides* of the *payment* itself.—Our Plenipotentaries did not admit (if indeed the Americans ventured to ask), that the *Certificates of the Collectors* should be this criterion. They well knew that to bind the Courts of ADMIRALTY to adopt *this* test, would be equivalent to opening the Trade altogether. The Courts then would still be at liberty to determine from *all* the documents and depositions before them whether the duties had been actually paid. Restricted to one inquiry, they would pursue it with additional exactness. Considering the adoption of this criterion of importation as an important *relaxation* of the GENERAL PRINCIPLE, they would construe it with the strictness always applied to *exceptions*. The effect of the Treaty would be simply this, that if the Court be satisfied of the one fact, of the *duties* having been *actually paid*, the ship or goods must be restored. Although in the course of the enquiry, fraud and evasion were ever so clearly proved—although in every *other* part of the transaction, the grossest *perjury* were conspicuous,, yet if the mere fact of *paying the duties* be admitted, the claim must be granted. Although it should be sworn, that from the time of the original shipment in Martinique, *Bourdeaux* was always the real destination, yet if the original clearances were for *Charleston*, and the goods were landed and paid

duties there, the ship and goods would be free. Such is the extent of our concession!

The new Article makes no alteration in the former provision of the law, that the goods shall be *Neutral property*; (and *here* it is thought necessary to add a *bonâ fide!*) Now, I will ask any Advocate of Doctors' Commons, whether the investigation into the *property*, coupled with that into the *payment of Duties*, would not retain a suit in Court as long as is at all usual *now?* I ask, whether there would not be as many cases of *further proof*; in short, whether the Neutral Claimant would not be as frequently and as vexatiously brought into Court, and as long detailed there, as if the *eleventh* Article had never been made? * . . . . . .

While we thus continue, then, to harrass the Trade of Neutrals, what is there of advantage to ourselves, that is left to us by our modified restrictions?

Supposing the stipulated duties to be really paid, without reserve, or hope of return;—our article obliges the Americans to charge our

* There is even an *additional* circumstance of Enquiry, attended certainly with no inconsiderable difficulty. The Court is to require proof of the payment of a Duty, of not less than two per Cent. ad valorem. Would *this* add simplicity to the process?

Enemy about two per cent. additional on his *sugar* or *coffee!* This is the utmost extent of our provision, and this perhaps exaggerated. FRANCE and SPAIN are not deprived of their colonial produce, nor are their Colonies distressed by the loss of the European market.—Our enemies feel no inconvenience from our naval superiority, but a most trifling addition of expence, not sufficient to compensate us for the wear and tear of a Sloop.

I contend, Sir, that this is *a total abandonment of the* PRINCIPLE upon which the "Rule of 1756" is founded; it is a most injudicious compromise, by which we convert a measure, intended *seriously* to *distress* our Enemy, into an inconsiderable tax, to be paid to a Neutral State.

In giving this great boon to our Enemy, we, no doubt, materially benefit our friends; we give them up (with a slight qualification) a hitherto forbidden trade: but while what we retain of restriction is totally inadequate to its own purpose, we free the Neutral from scarcely any thing of inconvenience.

It may well be asked how this could happen? Some persons may be led by the absurdity of the stipulation to doubt the correctness of my view. Not being in the secrets of the Commissioners on either side, I cannot

enumerate the stages of discussion by which our Plenipotentiaries were induced to insert the article; but I think I can form something of *guess* as to the real cause.

Why the *Americans* wished for the insertion, needs little explanation. *They* never considered the *Payment of Duties* as a *Test* of *bonâ fide* importation; they desired not to give effect to the principles of the British Rule;—their only object was to find the most *compendious form* by which the rule might be *evaded*. AMERICA having never once acknowledged the principles of our Restriction, but having constantly protested against them, this conduct in Messrs. MONROE and PINCKNEY was consistent and fair.

Of the British Plenipotentiaries, Lord HOLLAND, I cannot help suspecting, could not get rid of his ancient *bias* in favour of America, and of *concession*. He negotiated, I fear, with a prejudice against his own side of the question. Had *he* been sole Negotiator, I am strongly inclined to think, the whole claim of America would have been granted. Lord AUCKLAND, on the contrary, negociated, *as we have seen*, under a perfectly different impression. He came fresh from the Cockpit with the ideas of a Lord Commissioner of Appeal.

Lord HOLLAND argued, I suspect, from

the fifteenth number of the *Edinburgh Review*— Lord AUCKLAND, from the fifth volume of the *Admiralty Reports.* The one urged the advantages of liberality, concession, and friendship with America; the other pressed the importance of the Colonial Trade, the frauds of the Merchants, and the deceitfulness of the Government of the United States!

Of this state of things, a *compromise* was the natural effect. Lord HOLLAND consented to acknowledge the principle and general policy of the restriction. Lord AUCKLAND consented to modify its exercise. Between them both, they have abandoned a great point in the interests of England, without obtaining a return even in *feeling.* They benefited, it is true, but they did not *conciliate* America.

And such will generally be the consequence of compromises and *half-measures!*

Sir, I protest against the supposition, that in censuring this measure, I proceed upon that averseness from all conciliation with America, which has of late been so conspicuous. I object to the measure as radically vicious, inadequate to *any* purpose that could be intended.

Whatever my opinion of the importance of the restriction, I am convinced that it would have been better to abandon its exercise *altogether*

(retaining always the principle) than modify it as has been done. To frame such a modification as should satisfy America, and answer our purpose together, we found to be impossible. We should instantly have decided upon a simple line of conduct. We should *either* have determined, at all events to enforce the strict execution of our Rule, or to suspend it, as a valuable concession to America.

By the former, we should have had the full advantage of our rights as belligerents;—by the latter, if we did not obtain America as a *friend* we should have put her dispositions to a sure test.

But our ministers pursued a course of measures precisely calculated neither to benefit Great Britain nor to conciliate America.

DECIUS.

LETTER VIII.

SIR,

HAVING in my preceding letters very fully considered that part of the eleventh article which concerns the trade *from* the colonies of our enemies, very little remains to be said on the commerce, carried on through America, *to* those colonies.—The same observations will arise as to the insufficiency of the stipulation for any legitimate purpose, either British or American. The principle of the restriction is the same as in the former case, that is, not to permit neutrals to carry on, *for* an enemy, a trade forbidden in time of peace. The principle of the *relaxation* is also the same. The export of American articles to the Colonies is so intimately connected with the imports from them, that it was thought right to let the one accompany the other.

The importance of adhering to the principle is even greater, in the case of *supplying* the colonies, than in regard to the export of their produce. The former diminishes the prospect of reducing the colonies to submission, which Great Britain enjoys as a predominant power on the sea. But it is unnecessary to urge

these additional circumstances of aggravation. The observations contained in my last letter, coupled especially with *what we have since seen of the conduct of* America, will abundantly prove, that the stipulation was insufficient for any legitimate purpose, either British or American.

To that recent conduct I shall allude hereafter; meanwhile, we must proceed with the articles.

On none of the following *ten*, from the *twelfth* to the *twenty-first* inclusive, have I any particular observation.

They are copied, with slight alteration, from the Treaty of 1794, and are conceived in the spirit of amity and reciprocal convenience, which ought always to be the basis of commercial treaties. They will speak for themselves. I subjoin them, therefore, as I find them in the American abstract:

"The *twelfth* article extends to ships of Great Britain, and to all nations who shall adopt the same regulation, the protection of neutrality from a marine league to five miles from the American shore.

"The *thirteenth* article is in substance the

same as the nineteenth of the old Treaty, regulating privateers.

"The *fourteenth* is the same as the twentieth of the old Treaty, respecting pirates.

"The *fifteenth* article of this Treaty, like the twenty-first of the other, prohibits the subjects or citizens of one party to accept commissions from enemies of the other, and to commit acts of hostility.

"The *sixteenth*, like the twenty-second of the other, forbids reprisals before a demand of satisfaction.

"The *seventeenth* is the same as the twenty-third of the old Treaty, which, after stipulating that 'the ships of war of each of the contracting parties shall at all times be hospitably received in the ports of the other,' provides that American vessels driven by 'stress of weather, danger of enemies, or other misfortune,' to seek shelter, shall be received in ports into which such vessels could not ordinarily claim to be admitted. This stipulation is now made reciprocal.

"The *eighteenth* article, like the twenty-fourth of the old Treaty, prohibits the armament of privateers belonging to the enemies of

either, and the sale of their prizes in the ports of the other party.

" The *nineteenth* is the same as the twenty-fifth of the old Treaty, permitting ships of war to bring in their prizes, and take them away again without payment of duties, and prohibiting the entry of ships of the enemies of either party, which shall have made prize, unless driven by stress of weather, in which case they are to depart as soon as possible.

" The *twentieth* is the same as the twenty-sixth of the old Treaty, providing for merchants and others in one country, when war breaks out with the other.

" The *twenty-first* of this, like the twenty-seventh of the other, relates to giving up persons charged with murder or forgery."

The *twenty-second* is stated to be "a new article respecting shipwrecks, and promising humane treatment;". I know nothing of its contents; they are, I trust, unobjectionable.

The *twenty-third* requires more attentive discussion. It "secures to each, the rights of the most favoured nation, and declares that *all Treaties hereafter made, by either, with any nation, shall* pro facto *be extended in all their favourable operations to the other.*" This article

was not in the Treaty of 1794. It is, however, not unusual, in Treaties of Commerce, and was probably inserted in the present, without much consideration of its tendency and effect.

Stipulations of this sort, I apprehend, have in no instance been productive of advantage, and certainly are liable to cause great inconvenience. They cramp the nations which are bound by them in their negotiations with other powers; in drawing closer the bonds of amity between *two* states, they throw difficulties in the way of all other alliances which either might make.

On the principles of liberality in commercial policy, which I have before expressed, I have no objection to this reciprocal communication of advantages in *trade;* but I object to extending *ipso facto* to America whatever *privileges in navigation* we may grant to any other power. When the Treaty was concluded, there was a hope of DENMARK and PORTUGAL remaining neuter. If it had been thought politic, for the sake of retaining the Crown Prince in his neutrality, to allow the *Danish* flag to cover the property of our enemies, that valuable privilege would *ipso facto* have been also yielded to America. Had we even granted exemptions to the flags of *Pappenburgh* or *Knip-hausen*, for which a thousand temporary rea-

sons might exist, we should at the same time have completely renounced our maritime laws in favour of America. Nay, any indulgences which might have been given, according to the policy of all nations, to the States of *Tunis* or *Algiers*, would have been granted on the instant, to the United States of AMERICA.

These considerations, I trust, will support me in looking upon this stipulation, as one to which *primâ facie* there are very strong objections.

These objections will hardly be removed by the *reciprocity* of the concessions. In the *present* state of the world, that reciprocity would have no application to Great Britain, nor can any change, within the limited period of the Treaty, be reasonably expected to put us in the situation of calling upon America for the communication of her maritime code.

It may be said, that by this stipulation we prevent America from granting indulgences to France; and this at first sight seems plausible. But America favours France, not by treaties and conventions, but by her silent acquiescence in the ordinances of BUONAPARTE. It is not under *treaties* that she carries on the trade against which the *eleventh* article is directed; it is not by virtue of any formal Convention that she is become the carrier of France, and the

neutralizer of French property throughout the world. Against these evils, our mutual concession of "*Amicissima Gens*" would afford us no protection.

The *twenty-third* article I therefore couple with the *eighth* as either *useless* or *dangerous*; if it has *not* the tendency which I have ascribed to it, it can have none that is beneficial. It either proves great negligence in our ministers, or an *easiness* in negotiation, which, if not returned, is always despised by the Americans. *Which* has been the case?

DECIUS.

LETTER IX.

SIR,

My former letters have brought the discussion of the American Treaty down to the *twenty-third* article.

The *twenty-fourth* "engages to join in abolishing the *Slave Trade*." Of the abolition

itself, I certainly approve. I believe the present article to be perfectly novel in its nature. It, however, looks very well, and, if not likely to produce much good, can do no harm. If made the subject of a private understanding, the same end would probably have been produced, but Lord HOLLAND would not have had the same *eclat*.

The *twenty-fifth* "contains the stipulation, that the Treaty is not to interfere with antecedent engagements;" the *twenty-sixth* "limits the duration to ten years." The question of duration is involved in that of the merits of the Treaty; I have now therefore done with the articles.

But it appears, that previously to the signature of the Treaty, two *notes* were delivered by the British to the American Commissioners.

The *first* "keeps open for future discussion, a claim of Britain not to pay more on goods sent from Canada or New Brunswick, into the territories of the United States, than is paid on the importation of such goods in American ships."

We have already seen, in discussing the *sixth* article, that the question of the *American Intercourse* with our West India Colonies, was a point too knotty for the negotiators. Upon *that*

though considered as one of the most important of their negotiation, they unanimously resolved that they "*could not agree.*" It seems quite fair to refer to the same "amicable discussion," the trade alluded to in the present note. From *whence* any new light is to be thrown on either subject, what intervening events are to bring the parties nearer to an agreement, must remain in doubt and mystery; but our ministers acted prudently in connecting the two.

The *second* note is far more important. But, before I proceed to the discussion of its merits, I must protest against a mode of considering it which has been adopted by an advocate of the late administration. It has been said we are to discuss the Treaty *coupled with this Note.* Now this is partly true and *partly* false.

If we consider the Treaty as made subsequent to the French Decree of the 21st of November, we ought, undeniably, to take the Note as part of the Treaty. But in considering the Treaty itself, as a Treaty of Commerce and Navigation, negotiated without any contemplation of the French Decree, we are to look upon the note as having never been delivered.

If we take the Decree into the discussion, we must include the note also, but we may

leave them both out together, as we should have done, had the Treaty been signed six weeks earlier, or had the Decree of BUONAPARTE been revoked.

The repugnance of the advocates of the Treaty to considering that instrument without the supplemental note, arises, I suppose, from their consciousness of the weakness of the Treaty. I have heard of Acts of Parliament, which were said to contain *one* good clause, namely, that by which a power was reserved of "*altering*, *varying*, or *repealing*," during the same session. The Note before us stands in something of the same relation to the Treaty, and is, unquestionably, the best part of the whole document.

Of the general principle of the Note I approve highly, and I believe this opinion to be general.

Indeed, I like the measure so much, that I am almost unwilling to make any criticism upon it; a few remarks, however, I must offer in another Letter, when, in bringing towards a conclusion, the discussion which has drawn itself out to, I fear, an unreasonable length, I shall endeavour, from the details which I have laid before you, to frame a correct estimate of the merits of the whole transaction.

I this moment perceive, that an American pamphlet, on the subject of the "BRITISH TREATY," has been announced for publication here; I shall therefore suspend the further consideration of the subject, till I have had an opportunity of inspecting that treatise.

DECIUS.

LETTER X.

SIR,

BEFORE I proceed to pronounce, generally, upon the merits of the American Treaty, considered independently of the *Note* respecting the conduct of FRANCE, which I mentioned in my last Letter, I shall trouble you with a few observations on the Note itself.

To the general principle which dictated that paper I can have no objection; I consider it, on the contrary, as entitled to unqualified approbation. If the late ministers had it in contemplation, in consequence of the injurious proceedings of France, to adopt stricter regulations with respect to the trade of Neutrals, it

was unquestionably politic and just to express that determination to the neutral Ministers, previous to the signature of a Treaty having relation to the exercise of our belligerent rights.

My only objection is to the manner in which this determination was expressed, and to the qualification with which it appears to have been accompanied.

The measures of BUONAPARTE were, no doubt, unusual, and, in many parts, extravagant. The reasons assigned for the measure were still more extravagant, and even absurd; their futility was very easily exposed. "The only specific charge" was that which related to the "right of *blockade*;"—this was answered by an appeal to facts. The world was called upon to witness, that the KING "had never declared any ports to be in a state of *blockade* without allotting to that object a force *sufficient to make the entrance into them manifestly dangerous.*"

GREAT BRITAIN had not, for a long series of years, attempted to enforce any general prohibition of Commerce with her Enemies; she had never, on the other hand, admitted that the rights of War were circumscribed within the limits which Neutral Writers had partially marked out. She had, in her Treaties with RUSSIA, DENMARK, and SWEDEN, consented to a definition of a blockaded Port, nearly cor-

responding with that contained in the *Armed Neutrality*; but she had never adopted this definition as a part of the universal and immutable Law of Nations, to be claimed by every Power, with whom we might have no Treaty. Nothing is more difficult to define than the extent of the Rights of War;—in the present situation of affairs, any definition in the least *abridging* those Rights, must be allowed to be more than usually dangerous and impolitic. On this ground I object to the Note. Anxious to convict our enemies of tyrannous and unlawful conduct towards Neutrals, we have frequently, in State Papers and Pamphlets, restricted the rights of Belligerents more than was either consistent with substantial justice, or with the policy of Great Britain. We are apt to argue from the impression of the moment, and to grant to the Neutral Advocates every thing beyond the *exact point* of restriction for which we are contending. It appears to me that the Commissioners have, in some measure, fallen into this error; they have reprobated rather too strongly as "extravagant and repugnant to the Law of Nations," principles, which though not usually, or indeed for a century past, acted upon by Britain, have been forbidden rather by voluntary conventions than by any law, acknowledged in all situations and by all countries. (5)

(5) The correctness of this assertion may perhaps be doubted at first; but if we trace the practice of the different nations

But I have a stronger objection to the wording of the Note, (and *wording* is every thing in treating on such subjects, and with Americans), I ground it upon the apparent *limitation* of the *right* which England, as it is said, would derive from the acquiescence of the Neutrals in the restrictions imposed by France. It seems that we are restrained, in the opinion of our Plenipotentiaries, from going further, in the exercise of our right of retaliation, than the exact point at which BUONAPARTE may

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who have been Belligerent at different periods, and recollect the variations which have taken place in their conduct towards neutrals, we shall find it to be perfectly just. We shall be convinced not only that civilized nations have not formally adopted any general Code of Law, but that there has not been such a uniformity either of practice or stipulation, as to give, to any particular system, a right to demand the acquiescence of all nations. Instances of the interdiction of *all* commerce with an enemy are to be found in the history of almost every nation, and no state which has adopted a reform measure, when beneficial to itself, has a right to say, under altered circumstances, to another, "I have changed my mind; I was wrong when I acted so, and you must conform to my judgment now more enlightened."

I must beg distinctly to be understood, as not intending to rely upon this sort of argument in a defence of the conduct of ENGLAND. *She* is justified in her present system by the measures of her adversaries, and the acquiescence of the neutrals, as stated by Lords HOLLAND and AUCKLAND; and it is easy to prove, that her *former* practice, from the age of GROTIUS, has been equally favourable to neutrals, with that of other Belligerent Powers. It is rather to the measures of *France* that I wish these observations to be applied. I wish it to be carefully examined, whether,—although she has certainly done a great deal more than England to excite the complaints of neutrals, her conduct has been so repugnant to the Law, and usage of nations as we are apt at first to conceive. I shall leave this topic here, but shall perhaps treat the whole subject in a separate publication.

be pleased to stop. We are "to adopt towards Neutrals *any hostile system* to which those Neutrals shall have submitted *from our enemies*." We ought, surely, to have said, "If our Enemy persists in enforcing restrictions injurious to us, and if Neutrals acquiesce in his Decrees, we reserve to ourselves a right of meeting this new hostility,—in which Neutrals are aiding and assisting against us,—with *such* measures of restriction, or interdiction, as, *to us*, may seem most efficacious."

It could not have been intended servilely to copy the Decrees of BUONAPARTE, to prohibit what he might prohibit, and allow exactly what he might allow. If the "*acquiescence*" gives us any new right, it is because that acquiescence is a *hostile act* towards us; and we are not to be circumscribed in our mode of resenting or punishing that hostility.

I am not among those who regard the Order of the 7th of January as a weak and unwise measure; I look upon it as a dignified and politic exercise of forbearance, nor is it proved to be otherwise by its want of success. I do not blame the Ministers because they adopted only *by degrees* the measures of retaliation, but because they did not assert, with sufficient force, their *right* to pursue those measures further, to the extent, even, of actual hostility, should milder means prove ineffectual to their purpose.

Such, at least, is the view of the subject, dictated by a very strong opinion as to the importance of our maritime strength, and of the rights of maritime war;—rights which Lord GRENVILLE had so eloquently maintained in Parliament, and Lord AUCKLAND so steadily enforced at the Cockpit.

Having thus, reluctlantly, criticised this famous Note, I shall now attend to those who insist upon its being considered jointly with the Treaty. And whence this anxiety? Does the *Note* stand in need of the *Treaty* to support it? Unquestionably not; it was called for by the state of the Negotiation, but would at all times have been appropriate. Is it then that the *Treaty* will not stand without the *Note?* I suspect it. The Note is so palpably the ablest and wisest part of the transaction, that considering the Treaty without it, will rob the Plenipotentiaries of the greater share of honour. Looking, therefore, upon the *whole*, I willingly admit, that had the Treaty been ratified by Mr. JEFFERSON, no mischief would have ensued:—but why?—because the Note would have operated as a *repeal.* Or, if the case of acquiescence provided for in the Note had been prevented by the Treaty, *then* certainly, I allow, the concessions to America would not have been thrown away.

And so much for the Treaty and Note as

one Document. I am now, according to the intimation of my last Letter, to consider the Treaty by *itself*, "as a Treaty of Commerce and Navigation, negotiated without any contemplation of the French Decree."

This then shall be the subject of my next Communication, which will also be the last on the subject that you will receive from

DECIUS.

LETTER XI.

SIR,

THE Negotiation proceeded, as we have seen, on the basis of the Treaty of 1794. That Treaty was concluded, at a time when it was exceedingly desirable to conciliate America, upon principles of mutual liberality in trade and navigation. Without going deeply into an enquiry as to the benefits actually obtained by either State through these stipulations, I trust that it will be granted to me, that a young Nation like AMERICA stood more in need of en-

couragement from us, than we did of support from them. The advantages which we gave to America concerned her *Navigation*, which has accordingly experienced a progressive increase. Her trade to the *East Indies* bids fair to rival our own; and the trade between America and this Country has been almost entirely carried on in her own vessels.

What we gain from our intercourse with the United States consists in the immense consumption of our manufactures. This consumption would probably take place without any Treaty, and is hardly to be repressed even by Legislative authority. But the advantages which *we* give to *them* are in our own power, and may be revoked at pleasure.

I have heard it argued, by some, that the Commercial part of Lord GRENVILLE'S Treaty was calculated to ruin England, and by others, that America could not long survive its renewal. So far from either of these opinions being correct, I am convinced that the most unrestrained intercourse is desireable for both Countries. I admit, as fully as Lord HOLLAND can have been taught by Mr. FOX to urge them, the principles of Freedom in commercial arrangements. I have only given this slight view of our relative situation, in order to show that, of the two, America, as a rising State, in the progress of forming a Marine, requires the balance

of advantage, and obtains it by stipulations *nominally* reciprocal.

Such then being the spirit of the Treaty of 94, was it wisely adopted as a basis of Negotiation in 1806? The view which I have taken, unquestionably prompts me to answer in the affirmative. It was not imprudently chosen as a basis, but it was a basis favourable to America. In admitting it, we made concessions to America too valuable to be idly thrown away. I would not treat of concessions as a Merchant or as an Attorney, but I conceive that the liveliest philanthropy allows of reciprocity in favours. It allows me certainly to withold benefits from him who denies me what I consider to be my right, or essential to my interest.

If, then, we have obtained for ourselves all the stipulations which we consider as essential, we need not scrutinize minutely the value of what we have conceded; but if the Negotiation has evidently been conducted upon a principle of compromise, if we have been induced by America to wave a part of our claims, in her favour, it would be carrying candour and conciliation to an extravagant height, not to enquire whether she, too, has relaxed in some of her demands.

Although, therefore, in a general view, I approve highly of the commercial part of the

Treaty, and have no objection to the few alterations made in it, I must once more beg that it may be recollected throughout the whole discussion as advantageous to America.

But the arrangement of the trade was but a very small part of the business of the Commissioners. Two most interesting points occurred upon which the Treaty of 1794 was silent.

The first of these has already been very fully discussed in examining the *Eleventh* Article; our Ministers contrived to insert a stipulation, vexatious enough to continue the complaints of America, but too weak to secure the interests of Britain. The censure already passed upon this stipulation can be mitigated by no explanation. As a *compromise*, the Article cannot be defended; because the actual importance of our concession was out of all proportion greater than the value set upon it by America.

But *taking* it as a *compromise*, where is the counterpart, the corresponding acquisition?

Are they to be found in the other great point of the new discussion? Is the evil of the DESERTING SEAMEN remedied in return?

Long before the Negociation commenced, it was notorious that very warm disputes had

taken place between the two Governments, on the subject of the impressment of seamen. We accused the Americans of seducing our mariners from their allegiance, and of retaining them when properly demanded. The American Government, on the contrary, filled all Europe with complaints of the harsh and injurious methods which we pursued for recovering our deserters. The whole coast of America echoed these complaints. What would have been said to any man, who, when he read the appointment of the Plenipotentiaries, in the Gazette, had ventured a suspicion that on a subject like this, they would make no provision whatever! The most virulent opponent would not have hazarded such a speculation! No; he might have said, "I am afraid of the conceding spirit of Lord HOLLAND; I suspect the complaisance of Lord AUCKLAND for his newly recovered friends; I fear they will make but a bad Treaty; they will not assert with firmness our right of searching for deserters." But it could have entered into no man's head that the Ministers would venture to publish a Paper to the world, as the result of six months' discussion, under the auspices of the strongest and wisest, as well as of the most pacific and conciliating Administration that has existed, in which NO mention should be made of this one of the principal subjects of discussion.

Will it be pretended, that the *omission* was

favourable to Britain; that our rights and our power remained as heretofore; — let it be so for a moment, but away then with all claims to a conciliating spirit; let us hear no more of sincerity, openness, and simplicity.

Absurd however, and inconsistent as would be this defence of the conduct of the Ministers, they have really no better; there is not *one*, among the positive stipulations of the Treaty, in which a British object is obtained, or a British Right secured.*

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* I alluded in my Second Letter to the confirmation of the first Ten Articles of the Old Treaty. Looking at the nature of these Articles, perceiving them to be nearly all of a temporary nature, rather of the description of *Preliminaries*, than of definitive Arrangements, it did strike me as unaccountable that the four Negotiators should renew them all with one dash of the pen, without inquiring *which* had been executed, or *how* they had been fulfilled. I instanced, among other articles of this description, the Agreements relative to the Rivers Mississippi and St. Croix. It did seem strange, that if the Commissioners *had* adjusted the matters referred to them, the result should not be stated in the Treaty, and that if they had *not* performed their duty, the same ineffectual provision should remain as an agreement between the two Countries. The American Pamphlet to which I alluded in a former Letter, informs me that the two subjects now in question remain, to this moment, unsettled points. During the Administration of Mr. Addington, it seems a Convention was signed in London, by which the "subject matter of the Fourth and Fifth Articles was completely provided for." This Convention, like our Treaty, was rejected by the President. I am ignorant of its provisions; but it furnishes a clear proof of the necessity of some new provision, and confirms most pointedly the doubtful animadversions contained in my Second Letter. The "case of Boundary," indeed, is particularly mentioned by

We have now, Sir, proceeded through the whole Treaty; we have considered what was inserted in it; and we have not forgotten what the Plenipotentaries left out. And what, after all, must be our decision upon the whole matter—upon the merits of the Treaty, and upon the wisdom of the Negotiators?

We have given to America nearly every advantage which she desired in Commerce and Navigation; and we have relaxed in her favour a most important right. Not only have we gained nothing for ourselves, but we have abandoned what we thought essential to our interests.

The details of these operations, and the articles in which both were equally interested, we have so managed as to leave occasion for endless disputes.—On the three points in which England took the warmest interest—the intercourse with our Colonies;—the Seamen;—and the Enemy's Colonial Trade, our arrangements stand

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Mr. Monroe, in his Letter of 23d September, 1805, with the "Impressment of Seamen," as a point which ought to be adjusted, because, "with a view to perpetuate the friendship of the two Nations, no unnecessary cause of collision should be left open."

In this sentiment of the American Minister I cordially concur; and this it is which prompts me to object to the Treaty. Not only the Articles to which I have just alluded, but the *Eighth*, relating to indemnification for illegal Captures, and the *Twenty-third*, granting reciprocally the "Amicissima Gens," are included in the censure thus occasioned.

thus. We have, on two of them, made no provision at all;—on the third we have made a bad one.

The censure which has been passed upon the Eleventh Article will, in fact, apply to the entire Treaty, since, in the whole transaction, we have *thrown away* concessions. We have not by our moderation obtained a reciprocity of advantage! We have not induced America to consent to the acknowledgement and security of our own rights; nor have we even made her sensible of our friendly disposition.

The Treaty, negociated by the Nephew of Fox himself, the first fruits of that new System of Foreign Affairs, the result of that conciliating Diplomacy, which was to put the HARRISES and FITZHERBERTS, nay even the EDENS and the GRENVILLES, to the blush; *this* Treaty has been rejected by JEFFERSON. By the man who, in professions of simplicity, honesty, and liberality, was the Fox of the Transatlantic Continent. And why was it rejected? because we had not conceded *enough*, we had not given them enough of the *Trade of India*, we had not relaxed sufficiently our Law of *Blockade*, and Right of *Search*, we had not promised a sufficient compensation for *vexatious detention*, our *Eleventh* Article was not so liberal as it ought, as to the *Enemy's Colonial Trade!*

Am I not then justified in asserting, that concessions have been thrown away? Am I not warranted in withholding from our Ministers the praise, not only of energy and firmness, but of prudence and conciliation?

I am no advocate for war with America; I would turn indignantly from those who wish for war for commercial purposes; but I would not go on doatingly heaping benefits upon a people who return our blessings with a curse, I would not revile again, much less would I strike; but I would abstain from unnecessary intercourse with such a people.

If the very circumstance of the rejection of the Treaty, be not sufficient to destroy its claim to merit, the reproachful and contemptuous language in which Mr. JEFFERSON has subsequently spoken of the whole conduct of England, has surely taught us, that conciliation is unworthily bestowed upon Americans. If the Treaty was an experiment, it must be allowed completely to have failed.

I fear, Sir, that long as I have already trespassed upon your time, I may have omitted a few points; I trust, however, that I have sufficiently illustrated the diplomacy of Holland House, and the nature of Whig Conciliation.

I trust, Sir, that I have said enough to induce the late Administration, if they still adhere to their arrogated superiority in diplomatics, to appeal, in future, to their transactions with Europe. If neither their Negotiation with Russia, which has added millions to our Enemies; nor with the Porte, which nearly destroyed a British Squadron; nor with France, which proceeded for four months before the *basis* was fixed, and having commenced in philanthropy, broke off in personal pique;—If, ABOVE ALL, their feelings are not sufficiently gratified, in recollecting the conduct and the issue of the last Negotiation, with their SOVEREIGN, I do trust that they will not rely, for any portion of their fame, upon their rejected Treaty with America.

DECIUS.

FINIS.

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